

Lewis Stroud & Deutsch, P.L.

INTEROFFICE MEMORANDUM

TO: Estero Council of Community Leaders
c/o Howard Levitan

FROM: Nancy E. Stroud, Esq.

RE: Proposed Ordinances Creating Land Use Boards and Establishing Ex Parte
Communication Procedures

DATE: March 23, 2015

Introduction. At your request, I have prepared drafts of two ordinances for the consideration by the Estero Council of Community Leaders and potentially for the Estero Village Council's consideration. The first ordinance creates two advisory boards to the Village Council. The ordinance would establish the Village Planning and Zoning Board and the Village Community Appearance Board. Until these boards are established, according to the Charter, the Village Council is vested with all of the duties and responsibilities of the Board of County Commissioners, County Hearing Examiner, and Department of Community Development. See Section 12 "Referendum election; transition", (6) "Transitional Comprehensive Plan":

...(b) All powers and duties of the Lee County Department of Community Development, the Lee County Hearing Examiner, and the Board of County Commissioners of Lee County, as set forth in these transitional land use development regulations, shall be vested in the council until such time as the council delegates all powers and duties, or a portion thereof, to another agency, department, or entity."

There are many different options available for the Village Council's choice of how to divide the land use review and approval responsibilities of the Village. The proposed draft follows a standard method of apportioning those responsibilities by creating an advisory board -- the Planning and Zoning Board -- to review of development proposals, and comprehensive plan and zoning amendments, and to provide its recommendations to the Village Council for the ultimate approval of those proposals or amendments. Another board -- the Design Review Board -- follows a model that municipalities with a particular interest in community appearance have adopted to ensure that architectural and landscape design receive significant attention and review. Both boards have been discussed extensively by the Estero Council of Community Leaders (ECCL) in preparation for the transition process for the new Village of Estero. The draft Ordinance substantially follows the recommendations of the ECCL drafts with a few clarifications and modifications.

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The second ordinance creates regulations governing communication between the Village officials and persons who have made application for land use approvals or persons who are interested parties regarding those applications. This type of communication is commonly referred to as "ex-parte" communication, and is governed by case law and by statute to protect the integrity of quasi-judicial procedures which are conducted by the Village when reviewing those applications. The Florida legislature has created rules for such communications at section 286.0115, Florida Statutes, that are incorporated in the proposed ordinance.

Procedure for Adopting the Ordinances

The Village Charter provides that "(t)he procedure for adoption of ordinances and resolutions shall be as provided in s. 166.041, Florida Statutes." See Section 7 "Ordinances and resolutions", (3) "Adoption of Ordinances." The statute in relevant part requires the following (emphasis added):

(3)(a) Except as provided in paragraph (c), a proposed ordinance may be read by title, or in full, on at least 2 separate days and shall, at least 10 days prior to adoption, be noticed once in a newspaper of general circulation in the municipality. The notice of proposed enactment shall state the date, time, and place of the meeting; the title or titles of proposed ordinances; and the place or places within the municipality where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

The preparation of notices for the two ordinances should follow the statutory procedure referenced above.

Please do not hesitate to call on me if you have any questions.

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